

Regional Water Quality Control Board
North Coast Region
Assistant Executive Officer's Summary Report
December 11, 2020

ITEM: 7

SUBJECT: Public Hearing on Administrative Civil Liability Complaint No. R1-2020-0027 against Sonoma Luxury Resorts LLC, for the Saggio Hills Development Project Site (a.k.a. Montage Healdsburg) (Site), 16840 Healdsburg Avenue, Healdsburg, CA 95448 (Jeremiah Puget, Heaven Moore, Daniel Kippen, and Claudia Villacorta).

BOARD ACTION: The Board will consider adoption of Administrative Civil Liability Order No. R1-2020-0040 (Proposed Order).

BACKGROUND: On January 21, 2020, Regional Water Board Assistant Executive Officer (AEO) Claudia Villacorta issued Administrative Civil Liability Complaint (ACLC) No. R1-2020-0009 (subsequently amended via ACLC No. R1-2020-0027) (Complaint) to Sonoma Luxury Resort LLC (Discharger), the developer of a luxury hotel and residences on a 258-acre property in the hills in the northern portion of the unincorporated urban boundary of the City of Healdsburg, in Sonoma County (Site). The Complaint alleges thirty-eight violations, including unauthorized discharges of sediment and sediment laden water totaling 9.4 million gallons from the Site into tributary streams (Foss Creek and Lytton Creek) of the Russian River, based on evidence that the Discharger failed to implement the requirements of State Water Resources Control Board (State Water Board) Order No. 2009-0009-DWQ, as amended by Order Nos. 2010-0014-DWQ and 2012-0006-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit or CGP) and meet the conditions of the Clean Water Act Section 401 Water Quality Certification issued to the Discharger (401 Certification) while conducting construction work on the Site. The Complaint proposes that the Regional Water Board assess discretionary penalties in the amount of \$6,425,680 pursuant to California Water Code sections 13385, subdivision (e), and 13327, as well as the 2017 Enforcement Policy. The Complaint was issued after Regional Water Board staff progressive enforcement efforts, including multiple Site inspections and meetings, and issuing two stop work notices, were not effective in bringing the Site into compliance.

On February 11, 2020, in response to the Complaint, the Discharger waived its right to a hearing before the Regional Water Board within 90 days and requested to engage in settlement discussions with the Prosecution Team. The Prosecution Team accepted the waiver request and met with the Discharger's representatives on multiple occasions. Settlement negotiations followed between March and September 2020, but the Prosecution Team and the Discharger were unable to resolve disputed factual matters and reach an agreement. Accordingly, this matter is scheduled for an administrative hearing in December 2020.

The only substantive change in the amended Complaint (as compared to the original) is alleging additional liability under violation 38 for unauthorized discharges of storm water runoff during three additional storm events in September/October 2018 and May 2019,

increasing the total unauthorized discharge volume from 6.6 million to 9.4 million gallons.

DISCUSSION: The Complaint alleges that the Discharger released significant amounts of sediment and over 9.4 million gallons of sediment-laden water to Foss Creek and Lytton Creek tributary streams to the Russian River. Over the period from October 3, 2018, to May 16, 2019, Regional Water Board staff observed, measured, documented, or the Discharger reported, 38 violations of the following permits, regulations, and plans:

- Construction General Permit
- 401 Certification
- Water Quality Control Plan for the North Coast Region (Basin Plan)

Violations 1-36 are non-discharge violations for failure to implement Best Management Practices (BMPs) as required by Construction General Permit conditions. Violation 37 describes the Discharger's failure to prevent discharges from the Site resulting in turbidity increases of more than 20 percent above background levels in receiving waters on 33 days between November 29, 2018 and May 19, 2019. Violation 38 describes the Discharger's failure to prevent unauthorized discharges of 9.4 million gallons of sediment-laden storm water from the Site on September 30 through October 1, 2018, November 20-24, 2018, November 27-29, 2018, February 1-2, 2019, and May 16 and 18-19, 2019.

The Complaint proposes a total administrative liability of \$6,425,680, calculated by summing the liability amounts for both non-discharge and discharge violations, and staff costs related to investigation and enforcement, as follows:

- Non-discharge violations 1-36: \$754,550
- Discharge violation 37: \$189,420
- Discharge violation 38: \$5,362,349
- Staff costs: \$119,361

On November 2, 2020, Prosecution Team staff transmitted its Case in Chief to the Advisory Team and the Dischargers. On November 11, 2020, the Discharger's counsel provided multiple links to its Case in Chief, containing gigabytes of data. The Prosecution Team is in the process of downloading that data and may submit rebuttal evidence.

Prior to the hearing, on November 23, 2020 the Prosecution Team staff will provide a proposed Administrative Civil Liability Order No. R1-2020-0040 (Proposed Order) (Enclosure 4) for the Board to consider.

RECOMMENDATION: The AEO recommends that the Board adopt the Proposed Order in its entirety.

SUPPORTING DOCUMENTS:

1. Complaint R1-2020-0027 (Exhibit 1)
 - Penalty Methodology (Exhibit 2)
2. Hearing Notice and Procedures (as revised)
3. Prosecution Team Case in Chief (Submitted November 2, 2020)
 - List of exhibits (Exhibit 00)
 - List of witnesses (Exhibit 42)
4. Proposed Order No. R1-2020-0040 (Provided to the Advisory Team on November 23, 2020)

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